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REGULATORY AUTH.

01 JUN 19 PM Guy M. Hicks
General Counsel

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June 19, 2001 EXECUTIVE SECRETARY Fax 615 214 7406

VIA HAND DELIVERY

Mr. David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37245

Re: *Petition of ATM Discount Communications, Inc. for Arbitration with BellSouth Telecommunications, Inc.*
Docket No. 01-00302

Dear Mr. Waddell:

BellSouth Telecommunications, Inc. ("BellSouth") respectfully files this letter to address certain statements in the May 31, 2001 letter ATM Discount Communications, Inc filed in this docket. It is clear from that letter and its attachments that Discount Communications the sole proprietorship¹ is a different entity altogether than "ATM/Discount Communications, Inc." the corporation. As the Supreme Court of Tennessee noted in *Jackson Mobilphone Co. v. Tennessee Public Serv. Comm'n*, 876 S.W.2d 106 (Tenn. 1994), this distinction is one of legal significance in the context of seeking a certificate of convenience and necessity. In that case, the PSC had to decide which of two competing companies should have been granted a certificate of convenience to provide radio telecommunications services in a particular area. In ruling that the PSC based its decision on improper considerations and on matters that were not in the record, the Supreme Court noted that:

The commission also determined that Multipage was more financially responsible than Jackson Mobilphone because its shareholders were wealthier than Jackson Mobilephone's. The Escue family is undoubtedly wealthier than the Birmingham family. It does not necessarily follow, however, that the personal assets of either family will be used to benefit the corporate applicants.

¹ The letter of January 3, 2001 that is attached to the letter of May 31, 2001 acknowledges that "[o]n April 20, 1998, Discount Communications, a sole proprietorship under the control of Edward Hayes, obtained a certificate from the Tennessee Regulatory Authority to resell local telephone service in Tennessee." See Letter, page 1.

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Corporations are legal entities separate from their shareholders. The individual shareholders' purchase of the corporation's stock represents their financial contributions to the corporation, and shareholders are not legally required to make further investments in a corporation unless they have contractually obligated themselves to do so.

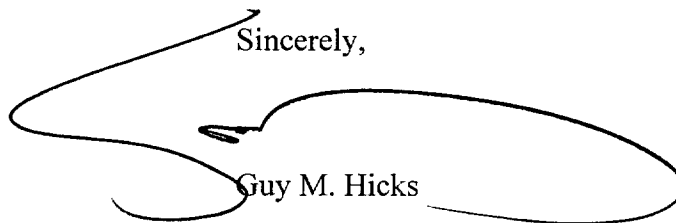
Both the Escue and Birmingham families expressed their intent to make additional investments in their companies in order to serve the Memphis market area. However, the administrative record contains no legally enforceable agreements between Multipage and the Escues or between Jackson Mobilphone and the Birminghams that contractually bind either the Escues or the Birminghams to make specific additional investments in their business should they receive authority to serve the Memphis market area. Thus, we find that the commission improperly weighed both parties' legally unenforceable promises to use their personal funds to finance their companies' expansion into the Memphis market area.

Id. at 115.

Thus, even if the personal assets of Edward Hayes provided a sole proprietorship "sufficient . . . financial . . . abilities to provide the applied for services" as of April 20, 1998, *see* T.C.A. §65-5-201(c)(2), those assets have nothing to do with whether the uncertificated corporate entity ATM Discount Communications, Inc. has sufficient financial abilities to obtain a certificate to provide the services it currently is providing without a certificate.

Accordingly, the TRA should dismiss ATM Discount Communications, Inc.'s Petition for Arbitration on the grounds that ATM Discount Communications, Inc. does not have a certificate of convenience and necessity to provide telecommunications services in Tennessee. In the meantime, the TRA should consider ordering this uncertificated entity to cease providing service in Tennessee unless and until it obtains such a certificate. *See* T.C.A. §65-4-201 (prohibiting any public utility from, among other things, establishing service without first having obtained a certificate).

Sincerely,

A handwritten signature in black ink, appearing to read "Guy M. Hicks", is written over the printed name. The signature is stylized with a large, sweeping loop at the beginning and end.

Guy M. Hicks

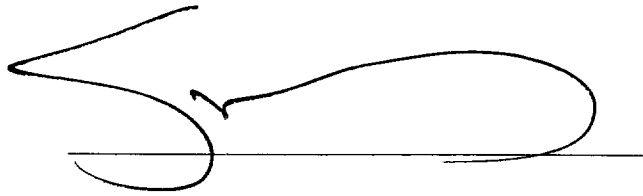
GMH/jej

CERTIFICATE OF SERVICE

I hereby certify that on June 19, 2001, a copy of the foregoing document was served on the following parties, via the method indicated:

- ☐ Hand
- ☒ Mail
- ☒ Facsimile
- ☐ Overnight

Henry Walker, Esquire
Boult, Cummings, et al.
Post Office Box 198062
Nashville, Tennessee 37219-8062

A handwritten signature in black ink, appearing to be "H. Walker", is written over a horizontal line.